

Calendar No. 466

108TH CONGRESS
2D SESSION**S. 1307****[Report No. 108–249]**

To authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in the implementation of fish passage and screening facilities at non-Federal water projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 20, 2003

Mr. SMITH introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

MARCH 29, 2004

Reported by Mr. DOMENICI, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in the implementation of fish passage and screening facilities at non-Federal water projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEFINITIONS.**

4 ~~As used in this Act—~~

1 (1) “Secretary” means the Secretary of the In-
2 terior, acting through the Commissioner of Reclama-
3 tion;

4 (2) “Reclamation” means the Bureau of Rec-
5 lamation, United States Department of the Interior;

6 (3) “Fish passage and screening facilities”
7 means ladders, collection devices, and all other kinds
8 of facilities which enable fish to pass through, over,
9 or around water diversion structures; facilities and
10 other constructed works which modify, consolidate,
11 or replace water diversion structures in order to
12 achieve fish passage; screens and other devices which
13 reduce or prevent entrainment and impingement of
14 fish in a water diversion, delivery, or distribution
15 system; and any other facilities, projects, or con-
16 structed works which are designed to provide for or
17 improve fish passage while maintaining water deliv-
18 eries and to reduce or prevent entrainment and im-
19 pingement of fish in a water storage, diversion, de-
20 livery, or distribution system of a water project;

21 (4) “Federal reclamation project” means a
22 water resources development project constructed, op-
23 erated, and maintained pursuant to the Reclamation
24 Act of 1902 (32 Stat. 388), and acts amendatory
25 thereof and supplementary thereto;

1 (5) “Non-Federal party” means any non-Fed-
 2 eral party, including federally recognized Indian
 3 tribes, non-Federal governmental and quasi-govern-
 4 mental entities, private entities (both profit and non-
 5 profit organizations), and private individuals;

6 (6) “Snake River Basin” means the entire
 7 drainage area of the Snake River, including all trib-
 8 utaries, from the headwaters to the confluence of the
 9 Snake River with the Columbia River; and

10 (7) “Columbia River Basin” means the entire
 11 drainage area of the Columbia River located in the
 12 United States, including all tributaries, from the
 13 headwaters to the Columbia River estuary.

14 **SEC. 2. AUTHORIZATION.**

15 (a) Subject to the requirements of this Act, the Sec-
 16 retary is authorized to plan, design, and construct, or pro-
 17 vide financial assistance to non-Federal parties to plan,
 18 design, and construct, fish passage and screening facilities
 19 at any non-Federal water diversion or storage project lo-
 20 cated anywhere in the Columbia River Basin when, and
 21 only when, the Secretary determines that such facilities
 22 would enable Reclamation to meet its obligations under
 23 16 U.S.C. 1536(a)(2) regarding the construction and con-
 24 tinued operation and maintenance of all Federal reclama-
 25 tion projects located in the Columbia River Basin, exclud-

1 ing the Federal reclamation projects located in the Snake
2 River Basin.

3 **SEC. 3. LIMITATIONS.**

4 (a) The Secretary may undertake the construction of,
5 or provide financial assistance covering the cost to the
6 non-Federal parties to construct, fish passage and screen-
7 ing facilities at non-Federal water diversion and storage
8 projects located anywhere in the Columbia River Basin
9 only after entering into a voluntary, written agreement
10 with the non-Federal party or parties who own, operate,
11 and maintain the project, and any associated lands, in-
12 volved.

13 (b) Any financial assistance made available pursuant
14 to this Act shall be provided through grant agreements
15 or cooperative agreements entered into pursuant to and
16 in compliance with the Federal Grant and Cooperative
17 Agreement Act of 1977 (41 U.S.C. 501).

18 (c) The Secretary may require such terms and condi-
19 tions as will ensure performance by the non-Federal party,
20 protect the Federal investment in fish passage and screen-
21 ing facilities, define the obligations of the Secretary and
22 the non-Federal party, and ensure compliance with this
23 Act and all other applicable Federal, State, and local laws.

24 (d) All right and title to, and interest in, any fish
25 passage and screening facilities constructed or funded pur-

1 suant to the authority of this Act shall be held by the
2 non-Federal party or parties who own, operate, and main-
3 tain the non-Federal water diversion and storage project,
4 and any associated lands, involved. In addition, the oper-
5 ation, maintenance, and replacement of such facilities
6 shall be the sole responsibility of such party or parties and
7 shall not be a project cost assignable to any Federal rec-
8 lamation project.

9 (c) Consultation under Section 7 of the Endangered
10 Species Act of 1973 (16 U.S.C. 1536) shall not be re-
11 quired based solely on the provision of financial assistance
12 under this Act. Projects or activities that affect listed spe-
13 cies shall remain subject to applicable provisions of the
14 Endangered Species Act of 1973.

15 **SEC. 4. OTHER REQUIREMENTS.**

16 (a) In carrying out this Act, the Secretary shall be
17 subject to all Federal laws applicable to the actions to be
18 undertaken for the construction of fish passage and
19 screening facilities. The Secretary shall assist the non-
20 Federal party or parties who own, operate, and maintain
21 a non-Federal water diversion or storage project, and any
22 associated lands, to obtain and comply with any required
23 State, local, or tribal permits.

24 (b) The Secretary shall comply with State water law
25 in the application of this Act. All water rights shall remain

1 with the owner or operator of any non-Federal water di-
 2 version and storage project who receives assistance pursu-
 3 ant to this Act.

4 (c) The Secretary shall coordinate with the Northwest
 5 Power Planning Council; appropriate agencies of the
 6 States of Idaho, Oregon, and Washington; and appro-
 7 priate federally recognized Indian tribes in carrying out
 8 the program authorized by this Act.

9 **SEC. 5. INAPPLICABILITY OF FEDERAL RECLAMATION LAW.**

10 (a) The Reclamation Act of 1902 (32 Stat. 388), and
 11 Acts amendatory thereof and supplementary thereto, shall
 12 not apply to the non-Federal water projects at which the
 13 fish passage and screening facilities authorized by this Act
 14 are located, nor to the lands which such projects irrigate.

15 (b) Notwithstanding any provision of law to the con-
 16 trary, the expenditures made by the Secretary pursuant
 17 to this Act shall not be a project cost assignable to any
 18 Federal reclamation project (either as a construction cost
 19 or as an operation and maintenance cost) and shall be
 20 non-reimbursable and non-returnable to the United States
 21 Treasury.

22 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

23 There are authorized to be appropriated such
 24 amounts as are necessary for the purposes of this Act.

1 **SECTION 1. DEFINITIONS.**

2 *As used in this Act—*

3 (1) “Secretary” means the Secretary of the Inte-
4 rior, acting through the Commissioner of Reclama-
5 tion;

6 (2) “Reclamation” means the Bureau of Rec-
7 lamation, United States Department of the Interior;

8 (3) “Fish passage and screening facilities”
9 means ladders, collection devices, and all other kinds
10 of facilities which enable fish to pass through, over, or
11 around water diversion structures; facilities and other
12 constructed works which modify, consolidate, or re-
13 place water diversion structures in order to achieve
14 fish passage; screens and other devices which reduce
15 or prevent entrainment and impingement of fish in
16 a water diversion, delivery, or distribution system;
17 and any other facilities, projects, or constructed works
18 or strategies which are designed to provide for or im-
19 prove fish passage while maintaining water deliveries
20 and to reduce or prevent entrainment and impinge-
21 ment of fish in a water storage, diversion, delivery,
22 or distribution system of a water project;

23 (4) “Federal reclamation project” means a water
24 resources development project constructed, operated,
25 and maintained pursuant to the Reclamation Act of

1 1902 (32 Stat. 388), and acts amendatory thereof and
2 supplementary thereto;

3 (5) “Non-Federal party” means any non-Federal
4 party, including federally recognized Indian tribes,
5 non-Federal governmental and quasi-governmental
6 entities, private entities (both profit and non-profit
7 organizations), and private individuals;

8 (6) “Snake River Basin” means the entire
9 drainage area of the Snake River, including all tribu-
10 taries, from the headwaters to the confluence of the
11 Snake River with the Columbia River;

12 (7) “Columbia River Basin” means the entire
13 drainage area of the Columbia River located in the
14 United States, including all tributaries, from the
15 headwaters to the Columbia River estuary; and

16 (8) “Habitat improvements” means work to im-
17 prove habitat for aquatic plants and animals within
18 a currently existing stream channel below the ordi-
19 nary high water mark, including stream reconfigura-
20 tion to rehabilitate and protect the natural function
21 of streambeds, and riverine wetland construction and
22 protection.

23 **SEC. 2. AUTHORIZATION.**

24 (a) *IN GENERAL.*—Subject to the requirements of this
25 Act, the Secretary is authorized to plan, design, and con-

1 *struct, or provide financial assistance to non-Federal par-*
 2 *ties to plan, design, and construct, fish passage and screen-*
 3 *ing facilities or habitat improvements at any non-Federal*
 4 *water diversion or storage project located anywhere in the*
 5 *Columbia River Basin when the Secretary determines that*
 6 *such facilities would enable Reclamation to meet its obliga-*
 7 *tions under section 7(a)(2) of the Endangered Species Act*
 8 *of 1973 (16 U.S.C. 1536(a)(2)) regarding the construction*
 9 *and continued operation and maintenance of all Federal*
 10 *reclamation projects located in the Columbia River Basin,*
 11 *excluding the Federal reclamation projects located in the*
 12 *Snake River Basin.*

13 *(b) PROHIBITION OF ACQUISITION OF LAND FOR HABI-*
 14 *TAT IMPROVEMENTS.—Notwithstanding subsection (a),*
 15 *nothing in this Act authorizes the acquisition of land for*
 16 *habitat improvements.*

17 **SEC. 3. LIMITATIONS.**

18 *(a) WRITTEN AGREEMENT.—The Secretary may un-*
 19 *dertake the construction of, or provide financial assistance*
 20 *covering the cost to the non-Federal parties to construct,*
 21 *fish passage and screening facilities at non-Federal water*
 22 *diversion and storage projects or habitat improvements lo-*
 23 *cated anywhere in the Columbia River Basin only after en-*
 24 *tering into a voluntary, written agreement with the non-*

1 *Federal party or parties who own, operate, or maintain the*
2 *project, or any associated lands involved.*

3 *(b) FEDERAL SHARE.—The Federal share of the total*
4 *costs of constructing the fish passage and screening facility*
5 *or habitat improvements shall be not more than 75 percent.*

6 *(c) NON-FEDERAL SHARE.—*

7 *(1) Except as provided in paragraph (4), a writ-*
8 *ten agreement entered into under subsection (a) shall*
9 *provide that the non-Federal party agrees to pay the*
10 *non-Federal share of the total costs of constructing the*
11 *fish passage and screening facility or habitat im-*
12 *provements.*

13 *(2) The non-Federal share may be provided in*
14 *the form of cash or in-kind services.*

15 *(3) The Secretary shall—*

16 *(A) require the non-Federal party to pro-*
17 *vide appropriate documentation of any in-kind*
18 *services provided; and*

19 *(B) determine the value of the in-kind serv-*
20 *ices.*

21 *(4) The requirements of this subsection shall not*
22 *apply to Indian tribes.*

23 *(d) GRANT AND COOPERATIVE AGREEMENTS.—Any fi-*
24 *nancial assistance made available pursuant to this Act*
25 *shall be provided through grant agreements or cooperative*

1 *agreements entered into pursuant to and in compliance*
2 *with chapter 63 of title 31, United States Code.*

3 (e) *TERMS AND CONDITIONS.—The Secretary may re-*
4 *quire such terms and conditions as will ensure performance*
5 *by the non-Federal party, protect the Federal investment*
6 *in fish passage and screening facilities or habitat improve-*
7 *ments, define the obligations of the Secretary and the non-*
8 *Federal party, and ensure compliance with this Act and*
9 *all other applicable Federal, State, and local laws.*

10 (f) *RIGHTS AND DUTIES OF NON-FEDERAL PAR-*
11 *TIES.—All right and title to, and interest in, any fish pas-*
12 *sage and screening facilities constructed or funded pursuant*
13 *to the authority of this Act shall be held by the non-Federal*
14 *party or parties who own, operate, and maintain the non-*
15 *Federal water diversion and storage project, and any asso-*
16 *ciated lands, involved. The operation, maintenance, and re-*
17 *placement of such facilities shall be the sole responsibility*
18 *of such party or parties and shall not be a project cost as-*
19 *signable to any Federal reclamation project.*

20 **SEC. 4. OTHER REQUIREMENTS.**

21 (a) *PERMITS.—The Secretary may assist a non-Fed-*
22 *eral party who owns, operates, or maintains a non-Federal*
23 *water diversion or storage project, and any associated*
24 *lands, to obtain and comply with any required State, local,*
25 *or tribal permits.*

1 (b) *FEDERAL LAW.*—*In carrying out this Act, the Sec-*
 2 *retary shall be subject to all Federal laws applicable to ac-*
 3 *tivities associated with the construction of a fish passage*
 4 *and screening facility or habitat improvements.*

5 (c) *STATE WATER LAW.*—

6 (1) *In carrying out this Act, the Secretary shall*
 7 *comply with any applicable State water laws.*

8 (2) *Nothing in this Act affects any water or*
 9 *water-related right of a State, an Indian tribe, or any*
 10 *other entity or person.*

11 (d) *REQUIRED COORDINATION.*—*The Secretary shall*
 12 *coordinate with the Northwest Power and Conservation*
 13 *Council; appropriate agencies of the States of Idaho, Or-*
 14 *egon, and Washington; and appropriate federally recog-*
 15 *nized Indian tribes in carrying out the program authorized*
 16 *by this Act.*

17 **SEC. 5. INAPPLICABILITY OF FEDERAL RECLAMATION LAW.**

18 (a) *IN GENERAL.*—*The Reclamation Act of 1902 (32*
 19 *Stat. 388), and Acts amendatory thereof and supple-*
 20 *mentary thereto, shall not apply to the non-Federal water*
 21 *projects at which the fish passage and screening facilities*
 22 *authorized by this Act are located, nor to the lands which*
 23 *such projects irrigate.*

24 (b) *NONREIMBURSABLE AND NONRETURNABLE EX-*
 25 *PENDITURES.*—*Notwithstanding any provision of law to the*

1 *contrary, the expenditures made by the Secretary pursuant*
2 *to this Act shall not be a project cost assignable to any Fed-*
3 *eral reclamation project (either as a construction cost or*
4 *as an operation and maintenance cost) and shall be non-*
5 *reimbursable and non-returnable to the United States*
6 *Treasury.*

7 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

8 *There are authorized to be appropriated such amounts*
9 *as are necessary for the purposes of this Act.*

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